

UNITED STATES DISTRICT COURT

MAY 19 2022

for the

Northern District of Georgia

KEVIN R. WEINER, Clerk
By:  Deputy ClerkAtlanta DivisionGARY LAMAR SIMMONS TRUST
(an unincorporated business trust)

Case No.

1:22-CV-2005

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

RCF 2 ACQUISITION TRUST c/o
U.S. BANK TRUST NATIONAL ASSOCIATION

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT AND REQUEST FOR INJUNCTION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	GARY LAMAR SIMMONS TRUST
Street Address	c/o 6393 Pheasant Trail
City and County	Fairburn
State and Zip Code	Georgia state republic
Telephone Number	
E-mail Address	garylamarsimmonstrust@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Pro Se 2 (Rev. 12/16) Complaint and Request for Injunction

Defendant No. 1

Name	RCF 2 ACQUISITION TRUST
Job or Title <i>(if known)</i>	c/o U.S. BANK TRUST NATIONAL ASSOCIATION
Street Address	1011 Centre Road, Suite 203
City and County	Wilmington
State and Zip Code	DE 19805
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 2

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 3

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 4

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

☐

Federal question

☒

Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. The plaintiff is an unincorporated business trust**

The plaintiff, *(name)* GARY LAMAR SIMMONS TRUST,
with principle place of business in Georgia.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated
under the laws of the State of *(name)* _____,
and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* _____, is a citizen of
the State of *(name)* _____. Or is a citizen of
(foreign nation) _____.

b. If the defendant is a corporation

The defendant, (name) RCF 2 Acquisition Trust, is incorporated under the laws of the State of (name) Delaware, and has its principal place of business in the State of (name) Delaware.
Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

The amount at stake is more than \$75,000, not counting interest and costs of court, because the value of property at risk has a market value of more than \$250,000 USD

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the injunction or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. Where did the events giving rise to your claim(s) occur?

1. The event took place in Georgia at the Fulton County Court House where the Defendant, RCF 2 ACQUISITION TRUST c/o U.S. BANK TRUST NATIONAL ASSOCIATION, via attorneys McCalla Raymer Leibert Pierce, LLC, after receiving notice of priority security interest held by Plaintiff and without the "Power of Sale", conducted a wrongful NONJUDICIAL Foreclosure "Sale" of property".

B. What date and approximate time did the events giving rise to your claim(s) occur?

The wrongful "NONJUDICIAL Foreclosure Sale" of property without the "Power of Sale" happened on April 5th, 2022 around 9:30 am.

C. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*

Plaintiff's interest in 6393 Pheasant Trail, Fairburn, GA 30213, hereinafter "property", was perfected on 10/24/2020 via Deed of Trust-1121413_GLS filed in Deed Book 63091 Pg. 79 CN# 2021-0028424 in the records of Fulton County, Georgia.

After Plaintiff received notice of a purported "sale" of the property scheduled for April 5th, 2022, Plaintiff mailed copies of the Instruments to the Defendant demonstrating Plaintiff's priority interest in property, which had been on record in Fulton county since February 03, 2021. Plaintiff subsequently filed a notice in the Legal Paper for 3 weeks notifying the public of the status and PLAINTIFF's rights in property. Plaintiff was alerted of the purported "sale" when the the "alleged buyer" appeared at the property, where a Trustee's office of the Plaintiff is located. The alleged buyer initiated Dispossession proceedings to remove Plaintiff from property to be executed on June 6, 2022

IV. Irreparable Injury

Explain why monetary damages at a later time would not adequately compensate you for the injuries you sustained, are sustaining, or will sustain as a result of the events described above, or why such compensation could not be measured.

Monetary damages at a later time will not adequately compensate Plaintiff for injuries sustained as the property in question is the office where the trustees of Plaintiff discharge their duties under the Declaration of Trust #112163 and the subsequent alleged "buyer" of the property has initiated Dispossession actions to remove all trust property from the premisis. Allowing this colorable "NONJUDICIAL" action to proceed further would irreparably prejudice the rights of the Plaintiff with respect to the property and hinder the Trustees from executing their duties and damaging beneficiary's interest in the trust.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Plaintiff requests an immediate injunction to issue in favor of Plaintiff, barring Plaintiff from being removed from the premises due to any Dispossession actions initiated against Plaintiff as a result from the fraudulent alleged "sale" from proceeding, until Defendant provides proof of claim of "Power of Sale" in 6393 Pheasant Trail, Fairburn, Georgia 30213 in order to facilitate the purported sale on April 5th, 2022. Plaintiff is requesting actual damages of \$500,000 and punitive damages in the amount of \$1 million as Defendant persisted in executing this egregious action despite notification, via attorneys McCalla Raymer Leibert Pierce, LLC of Plaintiff's Priority Interest in property.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 5/18/2022

Signature of Plaintiff

Printed Name of Plaintiff

by: 
GARY LAMAR SIMMONS TRUST

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address